

# EXHIBIT 22

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1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA  
3 SAN FRANCISCO DIVISION  
4  
5

6 IN RE FACEBOOK BIOMETRIC ) Case No. 3:15-CV-03747-JD  
7 INFORMATION PRIVACY )  
LITIGATION )

8 )  
THIS DOCUMENT RELATES TO: )

9 )  
ALL ACTIONS )

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16 VOLUME II  
17 VIDEOTAPED DEPOSITION OF CARLO LICATA  
18 Chicago, Illinois  
19 Tuesday, October 24, 2017  
20  
21  
22

23 Reported by:

24 PAULA CAMPBELL, CSR, RDR, CRR, CRC

25 JOB NO. 132505

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<p style="text-align: right;">Page 87</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">October 24, 2017 9:07 A.M.</p> <p style="text-align: center;">Volume II of the confidential videotaped discovery deposition of CARLO LICATA, held at the offices of MAYER BROWN, LLP, 71 S. Wacker Drive, Chicago, Illinois, pursuant to notice before Paula Campbell, CSR, RDR, CRR, CRC.</p>	<p style="text-align: right;">Page 88</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>APPEARANCES: EDELSON Attorneys for the plaintiffs 350 North LaSalle Street Chicago, Illinois 60654 BY: BENJAMIN RICHMAN, ESQ.</p> <p>ROBBINS GELLER RUDMAN &amp; DOWD Attorneys for the plaintiffs Post Montgomery Center One Montgomery Center San Francisco, California 94104 BY: DAVID HALL, ESQ.</p> <p>CAREY RODRIGUEZ MILIAN GONYA Attorneys for the plaintiff Frederick Gullen 1395 Brickell Avenue Miami, Florida 33131 BY: DAVID MILIAN, ESQ. (telephonically)</p>
<p style="text-align: right;">Page 89</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>APPEARANCES: MAYER BROWN Attorneys for Facebook 350 South Grand Avenue Los Angeles, California 90071 BY: JOHN NADOLENCO, ESQ.</p> <p>71 South Wacker Drive Chicago, Illinois 60606 BY: MATTHEW PROVANCE, ESQ.</p> <p>ALSO PRESENT: Milo Savich, Videographer</p>	<p style="text-align: right;">Page 90</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p>VIDEOGRAPHER: Okay. This is the start of tape number one of the videotaped deposition of Mr. Carlo Licata, Volume II of his deposition. The case is In Re Facebook Biometric Information Privacy Litigation. This is being heard in the United States District Court, Northern District of California, San Francisco Division. The case number is 3:15-CV-03747. This deposition is being held at Mayer Brown, LLP, 71 South Wacker Drive, Chicago, Illinois, 60606. Today's date is October 24th, 2017. The time is approximately 1:31 P.M. My name is Milo Savich from TSG Reporting, Inc., and I am the legal video specialist. The court reporter is Paula Campbell in association with TSG Reporting. Will counsel please introduce themselves for the record? MR. RICHMAN: Ben Richman on behalf of the deponent. MR. HALL: David Hall, Robbins Geller, on behalf of the plaintiff Nimesh Patel in the consolidated In Re Facebook actions. MR. NADOLENCO: John Nadolenco, Mayer Brown, on behalf of defendant Facebook.</p>

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<p>1 MR. PROVANCE: Matt Provance, Mayer Brown, 2 on behalf of defendant Facebook. 3 VIDEOGRAPHER: The attorneys participating 4 telephonically? 5 MR. PROVANCE: I don't think there are any. 6 VIDEOGRAPHER: Oh, okay. 7 Will the court reporter please swear in the 8 witness, and we may then proceed. 9 REPORTER: Would you please raise your 10 right hand. 11 CARLO LICATA, 12 called as a witness, having been duly sworn, 13 was examined and testified as follows: 14 EXAMINATION 15 BY MR. NADOLENCO: 16 Q. Good afternoon, Mr. Licata. Have you been 17 deposed since our -- since the last time you and I 18 met? 19 A. I have not. 20 Q. Okay. So I'm just going to go over some of 21 the basic ground rules -- 22 MR. NADOLENCO: Did we just have someone 23 join? 24 MR. MILIAN: Yeah. Hi, David Milian. 25 MR. NADOLENCO: David, do you want to just</p>	<p>1 state your formal appearance for the record? 2 Everyone else has. 3 MR. MILIAN: Yes. David Milian, Carey 4 Rodriguez Milian Gonya, for plaintiff Gullen. 5 BY MR. NADOLENCO: 6 Q. Okay. So just some of the ground rules. 7 Remember you have to wait until I finish a question 8 before you can give an answer. That way the court 9 reporter can keep the Q&amp;A together. 10 Does that make sense? 11 A. It does. 12 Q. Okay. And unless you ask me to rephrase a 13 question, if you don't understand something about 14 it, I will just assume that you have, in fact, 15 understood it. 16 Does that sound fair? 17 A. It does. 18 Q. Okay. Your lawyer may object from time to 19 time. You will recall from the last time that you 20 usually still have to answer the question, unless 21 the objection has to do with -- with privilege, in 22 which case your lawyer may instruct you not to 23 answer. 24 Do you understand that? 25 A. Yes, I do.</p>
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<p>1 Q. Okay. And then breaks are okay. I don't 2 expect this to be a super long deposition, frankly, 3 but if you need a break, just let me know, and I'm 4 happy to be oblige normally. 5 A. Thank you. 6 Q. Okay. But if there's a question pending, I 7 may ask you to answer that question before we go on 8 a break, unless the objection has to do with a 9 privilege issue. 10 Make sense? 11 A. Very well. 12 Q. Okay. Is there any reason you think that 13 you'd be unable to give your best and most accurate 14 testimony today? 15 A. No. 16 Q. And you understand that you're under oath, 17 meaning you're under the same type of oath that you 18 would be given if you were testifying in a court of 19 law? 20 A. I do. 21 Q. Okay. Do you still live in Chicago? 22 A. Yes, I do. 23 Q. Do you still work at Morgan Stanley, or 24 have you switched jobs? 25 A. I'm still at Morgan Stanley.</p>	<p>1 Q. Same position as before? 2 A. Same. 3 Q. Okay. And what's your current job title? 4 Are you still a financial advisor? 5 A. Financial advisor. 6 Q. And are you still -- for e-mail accounts 7 are you still using carlojlicata@yahoo.com? 8 A. I am. I've created a new one at gmail.com 9 recently. 10 Q. And what's that e-mail address? 11 A. Carlojlicata@gmail.com. 12 Q. I see a pattern. 13 Why did you create that new e-mail? 14 A. I'm getting all sorts of spam in my Yahoo 15 account. 16 Q. Is your Yahoo e-mail, though, still the one 17 associated with your Facebook account? 18 A. Yes, I believe so. 19 Q. Other than the new Gmail account, have you 20 registered for any other e-mail accounts since your 21 last deposition? 22 A. I have not. 23 Q. Okay. So I want to ask you about the 24 computers and devices -- 25 A. Okay.</p>

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1 Q. -- that -- that you use.  
 2 At your last deposition I think you said  
 3 you had signed up for Facebook in '09 --  
 4 A. Uh-hum.  
 5 Q. -- and had used an IBM ThinkPad laptop.  
 6 Does that sound right?  
 7 A. I'm not sure which one I used at the time  
 8 to sign up, but I had that -- I'm not sure what year  
 9 I've had it in, but I did have one.  
 10 Q. Okay. How -- let's do it this way: Since  
 11 your last deposition have you gotten any new laptops  
 12 or computers?  
 13 A. I have not.  
 14 Q. Since your last deposition have you gotten  
 15 a new smartphone?  
 16 A. Yes, I have.  
 17 Q. Okay. How many?  
 18 A. One.  
 19 Q. What do you have now?  
 20 A. Apple, the iPhone 7.  
 21 Q. When did you get that, approximately?  
 22 A. Um, I received that probably seven months  
 23 ago, maybe.  
 24 Q. Did you get that from Morgan Stanley?  
 25 A. I did not. It's personal.

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1 Q. Do you have a device that was provided to  
 2 you by Morgan Stanley?  
 3 A. I do not.  
 4 Q. So what -- do you use a desktop other -- in  
 5 your not for work, do you use a desktop computer?  
 6 A. For personal?  
 7 Q. Yes.  
 8 A. Yes, I do.  
 9 Q. Okay. And what -- what computer is that?  
 10 A. It's a MacBook Pro.  
 11 Q. Personally do you use any other computer?  
 12 A. I do not.  
 13 Q. Do you log onto your Facebook account from  
 14 a work computer?  
 15 A. I do not.  
 16 Q. Prior to this iPhone 7, did you have  
 17 another type of iPhone?  
 18 A. It was an iPhone 6. I can't recall if it  
 19 was a 6S or not, but 6 or 6S.  
 20 Q. And for how long did you have that,  
 21 approximately?  
 22 A. I believe two years, over two years.  
 23 Q. Other than the iPhone 6 and the  
 24 iPhone 7, do you recall any or smartphones you  
 25 used, say since 2009?

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1 A. I've had numerous phones. Can't recall the  
 2 exact order of them, though.  
 3 Q. Okay. You -- are you able to, like,  
 4 summarize, like, have they always been Apple phones?  
 5 A. They have not. I had a BlackBerry prior to  
 6 my iPhone. I believe I've had a older version of  
 7 the iPhone previous before the 6 came out.  
 8 Q. Since this case has been filed, have you  
 9 used only the iPhone 6 and the iPhone 7, to the  
 10 best of your knowledge?  
 11 A. Yes, I believe so. I believe that's  
 12 accurate.  
 13 Q. Do you own an iPad or other type of tablet?  
 14 A. I own an iPad.  
 15 Q. Have you only just owned that one iPad?  
 16 A. That's correct.  
 17 Q. What kind of iPad?  
 18 A. It's -- I'm not sure the name of it. It's  
 19 the iPad -- the first one with the retina display,  
 20 whatever one that makes it.  
 21 Q. When did you get it, approximately?  
 22 A. Gee, that was years ago. I can't recall  
 23 how long it's been.  
 24 Q. Like two or three years?  
 25 A. I believe it's older than that.

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1 Q. Okay. Have you -- so do you use -- did you  
 2 use Facebook on your iPhone 6?  
 3 A. Yes.  
 4 Q. Do you use it on your iPhone 7?  
 5 A. Yes.  
 6 Q. Do you use it on your MacBook Pro?  
 7 A. I'm not sure if I ever logged in from that  
 8 or not, but maybe, sure.  
 9 Q. Okay. And do you use it on your iPad?  
 10 A. Yes.  
 11 Q. Have you used Facebook, to the best of your  
 12 recollection, on any other devices?  
 13 A. Not -- not in awhile, no.  
 14 Q. And so, it sounds like since you're usually  
 15 using Facebook on mobile devices, you're usually  
 16 using the Facebook app to log onto the Facebook?  
 17 A. For the most part.  
 18 Q. Does your -- does your new phone have --  
 19 use the fingerprint to unlock the screen?  
 20 A. It does.  
 21 Q. Do you use that?  
 22 A. I do.  
 23 Q. Do you consider that use of biometric  
 24 information?  
 25 MR. RICHMAN: Objection.

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1 Go ahead.

2 A. I -- I wouldn't know.

3 Q. You don't know one way or the other?

4 A. Uh-uh.

5 Q. You have to say yes or no.

6 A. Oh, I'm sorry. I -- I do not know.

7 Q. And have you used that fingerprint feature  
8 even after you filed this lawsuit?

9 A. I have.

10 Q. Do you know what information about your  
11 fingerprint is being stored?

12 A. I do not.

13 Q. Do you know whether or not you provided  
14 express written consent for that fingerprint unlock  
15 feature?

16 A. Yes, I have.

17 Q. Okay. So your recollection is you did give  
18 consent to use that -- to use the fingerprint  
19 feature?

20 A. I did.

21 Q. Do you have any apps on your phones or on  
22 your iPad that use any kind of face detection  
23 technology?

24 A. Not to my knowledge, no.

25 Q. Do you use Snapchat?

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1 A. Do not.

2 Q. Do you have any kids?

3 A. Do not.

4 Q. Have you ever owned a digital camera?

5 A. No, other than my smartphones.

6 Q. Okay. Just so other than the cameras that  
7 are included with your smartphone, you haven't had a  
8 separate camera?

9 A. I have not.

10 Q. So when we last spoke, you were a very low  
11 user, to use your phrase, of Facebook. Is that  
12 still true?

13 A. Very true.

14 Q. Okay. Like how often do you check your  
15 news feed?

16 A. Maybe once every handful of weeks.

17 Q. Do you post updates --

18 A. I do not.

19 Q. -- to Facebook?

20 A. Do not.

21 Q. So why do you have the account?

22 A. For people to locate me.

23 Q. Do you use Messenger?

24 A. Very seldomly.

25 Q. When is the last time you used it?

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1 A. I believed I've probably used it within the  
2 last six months.

3 Q. Why don't you use it more frequently?

4 A. I have a cell phone. Office phone is  
5 typically my form of communication.

6 Q. Voice calls or, like, texts?

7 A. Voice calls, primarily.

8 Q. Do you upload or post photographs to  
9 Facebook?

10 A. I have not in a very, very long time.

11 Q. But you have at some point?

12 A. I have a -- uploaded a few, but not many.

13 Q. Did you have a -- can you tell me, like,  
14 roughly how often do you upload a photo?

15 A. I can't tell you the last time I even  
16 recall doing so.

17 Q. Is there a particular reason you don't  
18 use -- you don't upload -- upload photos more  
19 frequently to Facebook?

20 A. Just a private person. Just not a big fan  
21 of social media.

22 Q. Do you upload photos to other platforms?

23 A. I do not.

24 Q. When you have uploaded photographs to -- to  
25 Facebook, do you recall whether you used your phone

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1 or iPad?

2 A. I don't recall which device I used.

3 Q. Do you know whether it was -- did you do it  
4 from your laptop, or do you -- did you do it from a  
5 mobile device?

6 A. I don't recall which -- which device at  
7 all.

8 Q. Has your use of Facebook changed at all  
9 since you filed this lawsuit?

10 A. It's been reduced, the amount of times I  
11 use it.

12 Q. And why is that?

13 A. Just -- really just not a fan of the whole  
14 social media at all.

15 Q. And it sounds like that's not unique to  
16 Facebook. That's true for other social media  
17 platforms?

18 A. Correct.

19 Q. Do you use Twitter?

20 A. Do not.

21 Q. What about Instagram?

22 A. Don't have it.

23 Q. Do you know whether you receive  
24 notifications from Facebook if a user tags you in a  
25 photograph?

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<p>1 A. Can you repeat that?</p> <p>2 Q. Yes. Let me make it an easier question.</p> <p>3 A. Thanks.</p> <p>4 Q. Do you receive notifications from Facebook</p> <p>5 if a user tags you in a photograph?</p> <p>6 A. Yes.</p> <p>7 Q. Do you like that feature?</p> <p>8 A. I guess yes. I have my privacy on, so it</p> <p>9 alerts me that something has been posted.</p> <p>10 Q. When you've received those notifications,</p> <p>11 do you review the tags sometimes?</p> <p>12 A. Sometimes I do. I have it set to where it</p> <p>13 doesn't post without my permission.</p> <p>14 Q. When did you set that?</p> <p>15 A. I can't recall, but it's been like that for</p> <p>16 a long time.</p> <p>17 Q. Are you aware that you can untag yourself</p> <p>18 from those photographs once you receive the</p> <p>19 notification?</p> <p>20 A. I am.</p> <p>21 Q. And have you done that?</p> <p>22 A. A few times, yes.</p> <p>23 Q. Why did you do that?</p> <p>24 A. I just don't like my -- myself being out</p> <p>25 there for everybody to see.</p>	<p>1 Q. Have you been tagged in a photograph that</p> <p>2 you received notification about and then not</p> <p>3 untagged yourself?</p> <p>4 A. I believe so, yes.</p> <p>5 Q. And why would you do that?</p> <p>6 A. Just preference on who I was with or what I</p> <p>7 was willing to share.</p> <p>8 Q. Have you ever asked someone to take down a</p> <p>9 photo of you that had been uploaded?</p> <p>10 A. I have not.</p> <p>11 Q. Okay. So it sounds like you realize that</p> <p>12 you can opt out of tag suggestions; correct?</p> <p>13 MR. RICHMAN: Objection.</p> <p>14 But go ahead.</p> <p>15 A. No, I -- I've realized I can untag myself.</p> <p>16 Q. So do you realize that you can opt out of</p> <p>17 tag suggestions altogether?</p> <p>18 MR. RICHMAN: Same objection.</p> <p>19 A. No, I --</p> <p>20 MR. RICHMAN: Sorry, Carlo. Go ahead.</p> <p>21 THE WITNESS: Oh, thank you.</p> <p>22 A. No, I don't know, I guess, how to use that</p> <p>23 functionality yet.</p> <p>24 Q. Okay. I'm sorry. Do you mind repeating</p> <p>25 that, your answer? So the question was: Do you</p>
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<p>1 realize you can opt out of tag suggestions</p> <p>2 altogether?</p> <p>3 A. No, I guess I'm unaware of the</p> <p>4 functionality.</p> <p>5 Q. Do you have a LinkedIn account?</p> <p>6 A. I do.</p> <p>7 Q. Do you ever use direct messages on</p> <p>8 LinkedIn?</p> <p>9 A. Very seldomly.</p> <p>10 Q. Give -- when would you use it?</p> <p>11 A. If somebody were to reach out to me</p> <p>12 directly in that same method.</p> <p>13 Q. So in that situation you are not going to</p> <p>14 be rude, you might respond, but -- is that right?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. But have you ever affirmatively</p> <p>17 initiated a contact on LinkedIn through a direct</p> <p>18 message?</p> <p>19 A. To the best of my knowledge, no, I haven't.</p> <p>20 Q. Do you use any service for storing photos</p> <p>21 online?</p> <p>22 A. Um, I believe part of something is uploaded</p> <p>23 to the Apple cloud, but not everything. I believe I</p> <p>24 have shut off as much of the uploads as possible.</p> <p>25 Q. Okay. So other than Facebook and LinkedIn,</p>	<p>1 do you use any other social media?</p> <p>2 A. I do not.</p> <p>3 Q. Do you use any service for printing out</p> <p>4 digital photographs?</p> <p>5 A. I do not.</p> <p>6 Q. Okay. What, if anything, did you do to</p> <p>7 prepare for your depo today?</p> <p>8 A. Just reviewed my last deposition.</p> <p>9 Q. When did you do that?</p> <p>10 A. I did that today.</p> <p>11 Q. This morning?</p> <p>12 A. This morning.</p> <p>13 Q. Did you do anything else?</p> <p>14 A. I did not.</p> <p>15 Q. Did you meet with any attorneys?</p> <p>16 A. I had phone conversations with my attorney.</p> <p>17 Q. And by your attorney, is that Mr. Richman?</p> <p>18 A. Mr. Richman.</p> <p>19 Q. Anyone else?</p> <p>20 A. David Mindell.</p> <p>21 Q. Anyone else?</p> <p>22 A. That's all.</p> <p>23 Q. And how long did the phone conversation</p> <p>24 last?</p> <p>25 A. Very brief.</p>



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1 Q. Less than five minutes?  
 2 A. About five minutes each.  
 3 Q. And so these were separate conversations?  
 4 A. Yes.  
 5 Q. When did you talk to Mr. Richman?  
 6 A. This morning.  
 7 Q. And when did you talk to Mr. Mindell?  
 8 A. Last evening.  
 9 Q. And does Mr. Mindell represent you in this  
 10 case?  
 11 A. Yes, he does.  
 12 Q. Did you look at any documents other than  
 13 your deposition transcript?  
 14 A. I have not.  
 15 Q. Since your last deposition, have you looked  
 16 for any documents that Facebook has requested from  
 17 you in this litigation?  
 18 A. I have not.  
 19 Q. Are you aware that Facebook did, in fact,  
 20 ask you for documents since your last deposition?  
 21 A. I am not.  
 22 Q. Have you communicated with anyone besides  
 23 your attorneys about your deposition?  
 24 A. A couple people e-mailed me when they saw a  
 25 news article and asked me if this was me, but very

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1 limited interaction.  
 2 Q. Okay. So let me take a step back.  
 3 Am I correct that that happened shortly  
 4 after the lawsuit was filed?  
 5 A. Shortly after the lawsuit, correct.  
 6 Q. Okay. But -- so my question was a little  
 7 bit more focused. It was: Have you talked to  
 8 anyone else about your deposition today?  
 9 A. Oh, I have not.  
 10 Q. Okay. So, like, you didn't have to tell  
 11 your boss, I'm going to be out of the office this  
 12 afternoon for a deposition?  
 13 A. No, I do not.  
 14 Q. Have you ever communicated with any of the  
 15 other named plaintiffs in this case?  
 16 A. I have not.  
 17 Q. Do you know who they are?  
 18 A. I do not.  
 19 Q. Okay. So other than talking to the two  
 20 lawyers you identified and reviewed your --  
 21 reviewing your deposition transcript, did you do  
 22 anything else to prepare for your deposition?  
 23 A. No.  
 24 Q. Okay. So now a little bit broader. Have  
 25 you talked to anyone, excluding your lawyers, anyone

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1 else about the lawsuit?  
 2 A. Just in general terms or --  
 3 Q. Yes.  
 4 A. -- direct?  
 5 I have. It's essentially people reaching  
 6 out to me when they seen a news article or clipping  
 7 and just asking me if this was me.  
 8 Q. And how -- how many times has that  
 9 happened, do you recall?  
 10 A. Probably count on one hand how many times.  
 11 Less than five.  
 12 Q. And do you recall the particular people who  
 13 reached out?  
 14 A. Um, I really don't exactly know who it was,  
 15 but it wasn't many.  
 16 Q. Do you recall the names of any of them?

17 [REDACTED]  
 18 [REDACTED]  
 19 [REDACTED]  
 20 [REDACTED]  
 21 [REDACTED]  
 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]

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1 [REDACTED]  
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 17 [REDACTED]  
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 22 [REDACTED]  
 23 [REDACTED]  
 24 [REDACTED]  
 25 [REDACTED]



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1 [REDACTED]  
 2 [REDACTED]  
 3 [REDACTED]  
 4 A. To the best of my knowledge, yes.  
 5 Q. All right. And that's the only  
 6 conversation about this lawsuit that you  
 7 specifically recall having?  
 8 A. Yes.  
 9 Q. When did you first become aware of  
 10 Facebook's tag suggestion feature?  
 11 A. Um, it was several years ago. I can't give  
 12 you an exact year, but it's been a long time ago.  
 13 Q. Okay. Was it before you filed this lawsuit  
 14 or after?  
 15 A. Before.  
 16 Q. How long before? Can you estimate that in  
 17 any way?  
 18 A. I don't think I can estimate it, no.  
 19 Q. So do you know whether you were aware about  
 20 the tag suggestion feature before you were in  
 21 contact with your attorneys in this case?  
 22 A. Can you rephrase that, please?  
 23 Q. Were you aware of the tag suggestion  
 24 feature before you were in contact with your  
 25 attorneys in this case?

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1 A. Can you define what you mean by "feature"?  
 2 Q. Were you aware about tag suggestions before  
 3 you were in contact with your attorneys?  
 4 A. Yes.  
 5 Q. How do you know that?  
 6 A. When I would scroll my mouse over a photo,  
 7 it would then pop up and ask me is this XYZ person.  
 8 Q. And when you saw that, did -- did you do  
 9 anything in particular about it the first time you  
 10 saw it?  
 11 A. I believe I -- at that point I probably  
 12 beefed up my security.  
 13 Q. What do you recall doing?  
 14 A. I don't recall doing -- really doing  
 15 anything at any point, to be honest with you.  
 16 Q. Okay. So when you said "at that point I  
 17 probably beefed up my security," what did you mean  
 18 by that?  
 19 A. Um, when I notice something out of the  
 20 ordinary, I tend to go back in and -- and make sure  
 21 I have all the latest security updates on. That's  
 22 all.  
 23 Q. Okay. And so, you believed it would have  
 24 been your normal practice to do that then?  
 25 A. That would probably prompt me to take a

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1 second look.  
 2 MR. RICHMAN: John, do you mind if I grab  
 3 Carlo just a little bit of water real quick?  
 4 MR. NADOLENCO: Oh, no. Of course.  
 5 THE WITNESS: Thanks so much.  
 6 (Pause.)  
 7 THE WITNESS: Thanks so much.  
 8 BY MR. NADOLENCO:  
 9 Q. So after you saw the tag suggestions, did  
 10 you -- what -- what happened next vis-à-vis this  
 11 case? Did you go out and contact an attorney, or  
 12 were you contacted by an attorney? How did you come  
 13 to be a plaintiff here?  
 14 A. Um, I was speaking with an attorney of mine  
 15 at the time, which was Brian Coffman, and him and I  
 16 were having a conversation in regards to  
 17 something --  
 18 Q. Don't tell me the details --  
 19 A. Okay.  
 20 Q. -- about what you discussed, but okay.  
 21 So you talked to Brian Coffman?  
 22 A. Correct.  
 23 Q. What happened next?  
 24 A. Brian Coffman then introduced me to the  
 25 gentleman here, and the dialogues kept moving.

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1 Q. Did Mr. Coffman reach out to you, or did  
 2 you reach out to Mr. Coffman?  
 3 A. I reached out to Mr. Coffman.  
 4 Q. Are you currently -- okay, so back to the  
 5 Facebook platform.  
 6 A. Okay.  
 7 Q. Are you receiving tag suggestions when  
 8 photographs of you are being uploaded?  
 9 A. I'm receiving notifications that somebody  
 10 has maybe put something on my wall. But again,  
 11 because of my privacy settings, it doesn't actually  
 12 end up on my wall.  
 13 Q. Meaning you have it set where you have to  
 14 affirmatively approve --  
 15 A. Correct.  
 16 Q. -- the photograph?  
 17 A. Correct.  
 18 Q. Okay. When -- on the, I understand it's  
 19 relatively few occasions, but on the relatively few  
 20 occasions when you upload a photograph, did you  
 21 receive tag suggestions?  
 22 A. Um, I can't recall.  
 23 Q. Okay. When you view photographs of your  
 24 friends on Facebook, do you see tag suggestions  
 25 then?

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<p>1 MR. RICHMAN: Objection. 2 You can go ahead. 3 A. Um, I hardly even use Facebook at this 4 point, so I -- 5 Q. I get that, but so when you do use it 6 however infrequently -- 7 A. Right. 8 Q. -- and you are viewing a photograph, do you 9 recall one way or the other whether you're seeing 10 tag suggestions? 11 A. I don't believe so. 12 Q. Have you ever tagged friends based on tag 13 suggestions? 14 A. Not to my knowledge, no. 15 Q. I don't mean this from a technical 16 standpoint, but how would you -- when you see the 17 photograph and there is tag suggestions -- 18 A. Okay. 19 Q. -- in it, what is that -- what's your 20 understanding of what that is doing? What's that 21 telling you? 22 MR. RICHMAN: Objection. 23 But go ahead if you understand the 24 question. 25 A. Please -- please repeat that for me.</p>	<p>1 Q. What's the purpose of the tag suggestion, 2 to the best of your understanding? 3 A. Just to identify other people in the 4 photograph. 5 Q. And do you have an understanding whether 6 it's identifying only your friends, meaning your 7 Facebook friends, in the photograph? 8 A. I -- I have no idea. 9 Q. Okay. Have you ever seen a tag suggestion 10 of someone you had no idea who it was and it said 11 their name? 12 A. Honestly, I don't think I have enough 13 experience in uploading the photos to know that. 14 Q. Is tag suggest -- has tag suggest -- easy 15 for me to say -- has tag suggestions ever told you 16 information that you didn't already know about a 17 particular photograph? 18 A. Perhaps who somebody is or . . . 19 Q. But wouldn't they have to be a Facebook 20 friend of yours for the tag suggestion name to be 21 populated? 22 A. Honestly, I don't -- I don't know. 23 Q. Okay. So do you have a specific 24 recollection of seeing the name of someone who you 25 didn't already know as a friend?</p>
Page 117	Page 118
<p>1 A. I don't know. I don't recall. 2 Q. Okay. You've been a Facebook user since 3 about 2009; correct? 4 A. Correct. 5 Q. Do you recall seeing any announcements on 6 Facebook about tag suggestions when it was rolled 7 out? 8 A. I don't recall. 9 Q. Can I ask you to look at Exhibit 31? 10 A. Okay. 11 MR. NADOLLENCO: Do we have a copy for Ben? 12 MR. RICHMAN: I heard all about it, 13 but . . . 14 MR. PROVANCE: There you go. 15 MR. RICHMAN: Thanks. 16 BY MR. NADOLLENCO: 17 Q. As Exhibit 31, I already identified it, but 18 it has Bates label FBBIPA 1123 through 1125. 19 Please take a minute to look at this, and 20 let me know when you've had a chance to cruise 21 through it? 22 A. Okay. 23 (Pause.) 24 A. Okay. 25 Q. Do you recognize this post?</p>	<p>1 A. I do not. 2 Q. Do you have any reason to dispute that it 3 was published to Facebook users in 2010? 4 A. Do not. 5 Q. If I can ask you to look at page -- the 6 second page, which ends in Bates 1124? 7 A. Okay. 8 Q. In that first full paragraph underneath the 9 pictures, you see that it says, "When you or a 10 friend upload new photos, we use face recognition 11 software, similar to that found in many photo 12 editing tools, to match your new photos to other 13 photos you're tagged in." 14 A. Uh-huh. 15 Q. "We group similar photos together and, 16 whenever possible, suggest the name of the friends 17 in the photos." 18 Do you see that? 19 A. Yes, I do. 20 Q. Okay. So do you understand from reading 21 that, that tag suggestions uses some type of facial 22 recognition software? 23 A. Yes. 24 Q. Do you feel like that disclosure is pretty 25 clear?</p>

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<p style="text-align: right;">Page 119</p> <p>1 A. It appears to be clear.</p> <p>2 Q. It also goes on in the next paragraph to</p> <p>3 say, "If for any reason you don't want your name to</p> <p>4 be suggested, you will be able to disable suggested</p> <p>5 tags in your privacy settings." And then it tells</p> <p>6 you how to do that.</p> <p>7 Do you see that?</p> <p>8 A. Yes, I do.</p> <p>9 Q. So do you understand this to mean that you</p> <p>10 can disable tag suggestions if you don't want the</p> <p>11 feature to work on photos?</p> <p>12 A. Yes.</p> <p>13 Q. And I think I asked you this, but so have</p> <p>14 you disabled tag suggestions?</p> <p>15 A. Honestly, I'm unsure.</p> <p>16 Q. All right. Do you believe you will go</p> <p>17 check tonight to see whether you have tag</p> <p>18 suggestions enabled or disabled?</p> <p>19 A. Very much so.</p> <p>20 Q. And if it's enabled, what are you going to</p> <p>21 do?</p> <p>22 A. Disable it.</p> <p>23 Q. And why are you going to do that?</p> <p>24 A. Because this is something I don't want</p> <p>25 to -- my face to be part of.</p>	<p style="text-align: right;">Page 120</p> <p>1 Q. Do you see there in the last sentence the</p> <p>2 reference to the Help Center page?</p> <p>3 A. Yes.</p> <p>4 Q. Are you familiar with Facebook's Help</p> <p>5 Center page at all?</p> <p>6 A. I am not.</p> <p>7 Q. Do you know whether you have ever gone to</p> <p>8 that page?</p> <p>9 A. I do not know.</p> <p>10 Q. Let me ask you to pull -- by the way, there</p> <p>11 is directions on how to opt out if you want.</p> <p>12 A. Thanks.</p> <p>13 Q. So I've got exhibit -- did I give you</p> <p>14 thirty --</p> <p>15 A. 33.</p> <p>16 Q. -- 33?</p> <p>17 A. Is this correct?</p> <p>18 Q. Yes, that is correct.</p> <p>19 Why don't you take a look at Exhibit 33,</p> <p>20 which I'll represent to you is a printout from the</p> <p>21 Timeline and Tagging suggest -- Settings on</p> <p>22 Facebook.</p> <p>23 A. Okay.</p> <p>24 Q. Do you recognize this at all?</p> <p>25 A. I do not.</p>
<p style="text-align: right;">Page 121</p> <p>1 Q. And is that because you have never visited</p> <p>2 the Timeline and Tagging Settings page?</p> <p>3 A. It's just been such a long time since I've</p> <p>4 been on it.</p> <p>5 Q. All right. Do you -- as you sit there, do</p> <p>6 you know for certain that you have access to the</p> <p>7 Timeline and Tagging page, or you don't know one way</p> <p>8 or the other?</p> <p>9 A. I guess I can't be for certain. I'm under</p> <p>10 the impression I did everything in my power to be as</p> <p>11 private as possible.</p> <p>12 Q. All right. So why don't you take a minute,</p> <p>13 like, to look at this. Does it refresh your memory</p> <p>14 that you've been on this page?</p> <p>15 A. I do remember -- I have a vague</p> <p>16 recollection of something with, you know, friends,</p> <p>17 only me, private, something like that.</p> <p>18 Q. Okay. So if you're looking -- like if you</p> <p>19 look at tagging, you see the section on tagging?</p> <p>20 A. I do.</p> <p>21 Q. It says, "Who can see posts you're tagged</p> <p>22 in on your timeline?"</p> <p>23 A. Uh-hum.</p> <p>24 Q. And it says, "Only me."</p> <p>25 Do you see that?</p>	<p style="text-align: right;">Page 122</p> <p>1 A. Yes, I do.</p> <p>2 Q. What's your understanding of what that</p> <p>3 means?</p> <p>4 A. It looks like only I would be able then to</p> <p>5 see my own -- or identify my photo.</p> <p>6 Q. And do you know what setting you have</p> <p>7 currently on your Facebook page?</p> <p>8 A. No, I do not.</p> <p>9 Q. And so, prior till -- to today, did you</p> <p>10 know that you could turn tag suggestions off?</p> <p>11 A. I don't -- I don't believe so.</p> <p>12 Q. Do you understand now that if you do turn</p> <p>13 tag suggestions off, Facebook will no longer suggest</p> <p>14 that friends tag you in photos that look like you</p> <p>15 based on facial recognition?</p> <p>16 A. Appears so, yes.</p> <p>17 Q. What about Facebook's data policy, are you</p> <p>18 familiar at all with that?</p> <p>19 A. I'm not.</p> <p>20 Q. I will give you Exhibit 34.</p> <p>21 A. Thank you.</p> <p>22 Q. Feel free to take as long as you want, but</p> <p>23 I will direct you to particular portions of this.</p> <p>24 But, in general, does this policy look familiar to</p> <p>25 you?</p>

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<p>1 A. It does not.</p> <p>2 Q. Do you have any reason to believe that you</p> <p>3 have ever reviewed Facebook's data policy?</p> <p>4 A. I do not.</p> <p>5 Q. Have you ever reviewed Facebook's terms of</p> <p>6 use?</p> <p>7 A. I don't recall if I have.</p> <p>8 Q. Did you review this data policy to prepare</p> <p>9 in preparation for your deposition?</p> <p>10 A. I have not.</p> <p>11 Q. If you wanted to look at Facebook's data</p> <p>12 policy, what would you do, other than looking at it</p> <p>13 here in the depo room with me?</p> <p>14 A. Probably Google it.</p> <p>15 Q. Have you Googled, like, terms of use or</p> <p>16 data policies from other providers?</p> <p>17 A. I have not.</p> <p>18 Q. All right. So if you look at Page 1, you</p> <p>19 see that kind of subheading, "Things you do and</p> <p>20 information you provide"? Do you see that?</p> <p>21 A. I do not. Where are you -- oh, yes, I do.</p> <p>22 Q. Okay. So first sentence there says, "We</p> <p>23 collect the content and other information you</p> <p>24 provide when you use our services."</p> <p>25 Do you see that?</p>	<p>1 A. Yes.</p> <p>2 Q. And then further down, kind of at the top</p> <p>3 of the next page, so Page 2 of 8 --</p> <p>4 A. Okay.</p> <p>5 Q. -- at the very top it says, "We also</p> <p>6 collect content and information that other people</p> <p>7 provide when they use our services, including</p> <p>8 information about you, such as when they share a</p> <p>9 photo of you."</p> <p>10 Do you see that?</p> <p>11 A. Yes, I do.</p> <p>12 Q. So is this telling you that Facebook is</p> <p>13 collecting content and information from photographs</p> <p>14 of you that are uploaded by other users?</p> <p>15 A. Yes, it is.</p> <p>16 Q. And you understand that from reading this</p> <p>17 disclosure; right?</p> <p>18 A. Yes, I can.</p> <p>19 Q. Okay. And then on Page 3 of 8, in the</p> <p>20 middle of the page there, let me know when you're</p> <p>21 with me.</p> <p>22 A. Okay.</p> <p>23 Q. It says, "For example, we are able to</p> <p>24 suggest that your friends tag you in a picture by</p> <p>25 comparing your friends' pictures to information</p>
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<p>1 we've put together from your profile pictures and</p> <p>2 other photos in which you've been tagged."</p> <p>3 Do you see that?</p> <p>4 A. Yes, I do.</p> <p>5 Q. And then just below that, like the next</p> <p>6 sentence says, "If this feature is enabled for you,</p> <p>7 you can control whether we suggest that another user</p> <p>8 tag you in a photo using the Timeline and Tagging</p> <p>9 Settings."</p> <p>10 Do you see that?</p> <p>11 A. Yes, I do.</p> <p>12 Q. And do you understand that to be talking</p> <p>13 about tag suggestions?</p> <p>14 A. Yes, I do.</p> <p>15 Q. Now on Page 6 of 8, do you see the section</p> <p>16 there, "How can I manage or delete information about</p> <p>17 me?"</p> <p>18 A. Yes.</p> <p>19 Q. It says -- the data policy says there, kind</p> <p>20 of in the middle of the page, "We store data for as</p> <p>21 long as it is necessary to provide products and</p> <p>22 services to you and others, including those</p> <p>23 described above. Information associated with your</p> <p>24 account will be kept until your account is deleted,</p> <p>25 unless we no longer need the data to provide</p>	<p>1 products or services."</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Do you understand -- do you have one -- an</p> <p>5 understanding one way or the other about facial</p> <p>6 templates?</p> <p>7 MR. RICHMAN: Objection.</p> <p>8 Go ahead.</p> <p>9 A. I guess I don't understand what you mean by</p> <p>10 fa- -- "template".</p> <p>11 Q. Okay. Does that word "face template," mean</p> <p>12 anything to you? No?</p> <p>13 A. Not exactly. I feel like it could be a</p> <p>14 very skewed word.</p> <p>15 Q. Okay. Well, so in this lawsuit your</p> <p>16 complaint has, and we can go through it if you want,</p> <p>17 but it refers a number of times to Facebook</p> <p>18 allegedly collecting face templates.</p> <p>19 A. Right.</p> <p>20 Q. Okay. So that's -- that's what I'm talking</p> <p>21 about.</p> <p>22 A. Okay.</p> <p>23 Q. I'm curious, based on this language that we</p> <p>24 just read, do you understand that users' templates</p> <p>25 will be stored by Facebook until users delete their</p>

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<p>1 account or until they are no longer needed to 2 provide products or services? 3 A. I don't exactly see where it refers to the 4 facial template directly. 5 Q. No, fair point. It does -- it does not use 6 the term "facial template," but it says we store 7 data for as long as necessary to provide services; 8 right? 9 A. Right. 10 Q. And tag -- you would agree with me tag 11 suggestions is a service Facebook provides? 12 A. Correct. 13 Q. Okay. So, and it goes on to say, 14 information associated with the -- your account will 15 be kept until your account's deleted; right? 16 A. Correct. 17 Q. So if you delete your account, does this 18 tell you that Facebook would also delete your facial 19 template? 20 MR. RICHMAN: Objection. 21 You can answer. 22 A. Okay. Yes, it -- that's clear. 23 Q. Do you recall, and forgive me if I already 24 asked you this, so we looked in Exhibit 31 at kind 25 of a -- what I'll characterize as an announcement</p>	<p>1 about tag suggestion. 2 Do you recall receiving any other type of 3 announcement or disclosure from Facebook related in 4 any way, shape, or form to tag suggestions or face 5 recognition? 6 A. I do not recall. 7 Q. Do you recall any, like, tutorials about 8 tag suggestion that popped up when you were using 9 Facebook? 10 A. I do not. 11 Q. You understand that your lawsuit alleges a 12 violation of the Illinois Biometric Information 13 Privacy Act? 14 A. Correct. 15 Q. And can we -- will you understand if I call 16 it BIPA, that I'm referring to that Act? 17 A. Okay. 18 Q. During your first deposition, I think you 19 told me you had, like, a very high level 20 understanding of the act, but said it was confusing 21 and legalese. Without revealing anything you know 22 only from talking to your lawyers, have you learned 23 anything more since your last deposition about what 24 BIPA requires? 25 A. I did not.</p>
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<p>1 Q. Do you have anything more than a high level 2 of understanding of what the statute provides or 3 requires? 4 A. I do not. 5 Q. Have you done any independent research 6 about BIPA? 7 A. I have not. 8 Q. How would you describe for me what BIPA 9 requires or prohibits? 10 A. That question is over my head. 11 Q. So you don't -- is it fair to say you don't 12 have an understanding of what the statute requires? 13 A. Yes, that's fair. 14 Q. Have you done any research about biometric 15 data generally? 16 A. I have not. 17 Q. Do you have an understanding of what 18 biometric information or data even means? 19 A. From a very high level, yes. 20 Q. What's your very high level understanding? 21 A. It's storing, like, data points on your 22 face where maybe it measures distance between eyes, 23 nose, mouth, things of that nature. 24 Q. And where does that understanding come 25 from?</p>	<p>1 A. Just what I've read, what I've seen. 2 Q. And meaning, like, your complaint? Or what 3 do you call reading or seeing that led to that? 4 A. Just from the newspapers that I've read. 5 Q. Anything else? 6 A. Just TV news and newspapers. 7 Q. Do you recall the particular newspapers? 8 A. No, I don't. I read several. 9 Q. Like local papers? 10 A. Um, like, Wall Street Journals, sometimes I 11 get the USA Today. You know, local news channels. 12 Q. Okay. Other than just those type of 13 public, like, news information, have you done 14 anything to educate yourself about what bio -- 15 biometric data is? 16 A. No, I have not. 17 Q. Do you have any concerns about face 18 recognition technology just in general? 19 MR. RICHMAN: Objection. 20 You can answer. 21 A. Just my concerns are I'm a very private 22 person. Um, if a camera detects -- let's say I'm 23 away from home, it's in the wrong hands, that could 24 potentially, let's say, give a burglar an 25 opportunity to go in and, you know, break into my</p>



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<p>1 house. So things of that nature.</p> <p>2 Q. Okay. But you're not saying that's what</p> <p>3 Facebook's technology does, but that's just your</p> <p>4 con- -- correct?</p> <p>5 A. No, yeah, right. Several concerns, stuff</p> <p>6 like where -- just privacy and things of that</p> <p>7 nature.</p> <p>8 Q. Have you talked to anyone about your</p> <p>9 concerns surrounding face recognition?</p> <p>10 A. Just my attorneys.</p> <p>11 Q. Do you have any understanding of how</p> <p>12 Facebook's facial recognition technology works?</p> <p>13 A. I do not.</p> <p>14 Q. Like if I asked you, like, can you walk me</p> <p>15 through the process of, like, what's your best guess</p> <p>16 of what it's doing, can you even do that?</p> <p>17 A. I -- I'm not the tech savvy guy. I have no</p> <p>18 idea.</p> <p>19 MR. RICHMAN: I would have objected as</p> <p>20 asked and answered, but go on.</p> <p>21 Q. All right. So I want to jump back to the</p> <p>22 phrase "template" --</p> <p>23 A. Okay.</p> <p>24 Q. -- as used in your complaint.</p> <p>25 Do you have an understanding of what that</p>	<p>1 means?</p> <p>2 A. I do.</p> <p>3 Q. Okay. What's your understanding of what</p> <p>4 that means from your complaint?</p> <p>5 A. Based on what we just discussed a moment</p> <p>6 ago, it's our whole image being stored.</p> <p>7 Q. An image of a particular face?</p> <p>8 A. Correct.</p> <p>9 Q. Meaning, like, a picture of a face?</p> <p>10 A. Correct.</p> <p>11 Q. Not a series of numbers?</p> <p>12 A. That I could not tell you.</p> <p>13 Q. Is it your understanding that Facebook</p> <p>14 stores templates for some users in connection with</p> <p>15 tag suggestions?</p> <p>16 A. Yes.</p> <p>17 Q. Is it your understanding that templates are</p> <p>18 based on photographs that are uploaded to Facebook?</p> <p>19 A. Correct.</p> <p>20 Q. Do you know how the templates are created?</p> <p>21 A. I do not.</p> <p>22 Q. Do you know what photographs are used to</p> <p>23 create the templates?</p> <p>24 A. No, I do not.</p> <p>25 Q. Besides the template, do you believe that</p>
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<p>1 Facebook has stored any other information about your</p> <p>2 face in connection with face recognition?</p> <p>3 A. That I don't know.</p> <p>4 Q. Do you know which Facebook users are</p> <p>5 eligible to have templates?</p> <p>6 A. I do not.</p> <p>7 Q. Assuming a template is created for a user,</p> <p>8 do you know when, if ever, the template will be</p> <p>9 deleted?</p> <p>10 MR. RICHMAN: Objection.</p> <p>11 But go ahead.</p> <p>12 A. Based on what I just read.</p> <p>13 Q. And what's your understanding from what you</p> <p>14 just read?</p> <p>15 A. Upon deletion of the account.</p> <p>16 Q. What about when tag suggestions is turned</p> <p>17 off, did we also read that if that's turned off that</p> <p>18 your -- your template will be deleted?</p> <p>19 MR. RICHMAN: Objection.</p> <p>20 But go ahead.</p> <p>21 A. From what I glanced at, I didn't study it,</p> <p>22 it looks like only upon deletion of the account,</p> <p>23 from what I quickly glanced at.</p> <p>24 Q. Do you have any knowledge about whether</p> <p>25 templates are updated?</p>	<p>1 A. I do not.</p> <p>2 Q. Do you know whether templates are created</p> <p>3 for nonusers?</p> <p>4 A. I do not.</p> <p>5 Q. So your complaint contains a number of</p> <p>6 allegations about how Facebook's facial recognition</p> <p>7 technology works. Do you have any personal</p> <p>8 knowledge about how the facial recognition</p> <p>9 technology works?</p> <p>10 A. No, I do not.</p> <p>11 Q. Meaning, like, did you do any research to</p> <p>12 find out?</p> <p>13 A. Do not.</p> <p>14 Q. Did you look at any Facebook websites or</p> <p>15 news articles about how Facebook's facial</p> <p>16 recognition technology works?</p> <p>17 A. I have not.</p> <p>18 Q. Can you describe, just in your own words,</p> <p>19 what your lawsuit is about?</p> <p>20 A. It's about Facebook, without my permission,</p> <p>21 taking and storing my template.</p> <p>22 Q. Anything else?</p> <p>23 A. No.</p> <p>24 Q. What should, in your view, Facebook have</p> <p>25 done differently?</p>



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<p>1 MR. RICHMAN: Objection.  2 Go ahead and answer.  3 A. That's a pretty vague statement.  4 Q. Well, do you believe Facebook did anything  5 wrong by taking and storing your template?  6 A. I do.  7 Q. And what should -- should it have done  8 different?  9 MR. RICHMAN: Same objection.  10 But you can answer if you understand the  11 question.  12 A. I mean there's -- I guess make it very  13 clear and evident to me that this process was  14 being -- taking place.  15 Q. Well, I mean, we just looked at a number of  16 exhibits that made it pretty clear. What besides  17 that could Facebook have done?  18 MR. RICHMAN: Objection.  19 Go ahead.  20 A. If for some reason I overlooked this, there  21 is not a constant reminder.  22 Q. So that's what you want, a constant  23 reminder that Facebook is using facial recognition  24 and tag suggestions?  25 A. It's one example of how it could have been</p>	<p>1 made easier.  2 Q. Isn't a constant reminder seeing pictures  3 that you're tagged in that Facebook is using facial  4 recognition and tag suggestions?  5 A. No, it's not.  6 Q. It's not?  7 A. Uh-uh.  8 Q. So when you see a tag of -- notification  9 you told me you get that you're tagged in something,  10 that's not a little reminder that, oh, hey, face --  11 facial recognition is being used here by Facebook;  12 that's your testimony?  13 MR. RICHMAN: Objection.  14 A. No.  15 MR. RICHMAN: Misstates the testimony,  16 but . . .  17 Q. Okay. But, so your testimony is that's not  18 a sufficient reminder?  19 A. No, it's not.  20 Q. Can you think of anything else that  21 Facebook should have done differently?  22 A. I think it's a very vague and unfair  23 statement, question.  24 Q. It's quite -- just as you sit there, can  25 you tell me anything else you think Facebook should</p>
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<p>1 have done differently?  2 A. At this present second, no.  3 Q. I think I know the answer to this question,  4 but I'll ask it anyway. Do you -- based on your  5 understanding, such as it is, of the tag suggestion  6 process, do you -- can you tell me when it is that  7 you believe that Facebook violates BIPA?  8 A. Can you --  9 MR. RICHMAN: Objection.  10 A. Can you repeat that, please?  11 Q. What is Facebook doing that violates BIPA,  12 in your own words?  13 MR. RICHMAN: Objection.  14 A. That's a --  15 MR. RICHMAN: But you can go ahead and  16 answer.  17 A. I think that's a very legal question.  18 That's above my pay grade.  19 Q. Okay. So you don't know?  20 A. Correct.  21 Q. Do you believe Facebook is violating BIPA  22 by storing templates?  23 MR. RICHMAN: Objection.  24 A. Again, I don't have a great understanding  25 of BIPA.</p>	<p>1 Q. Okay. So you don't know one way or the  2 other?  3 A. I don't know.  4 Q. Do you want Facebook to change its policies  5 or practices regarding tag suggestions going forward  6 as a result of this suit?  7 A. I do.  8 Q. What do you want it to change?  9 A. To make it very evident that this is taking  10 place.  11 Q. But you agree, from what I've shown you  12 this afternoon, Facebook makes it evident; correct?  13 A. They do make it evident.  14 Q. Do you want Facebook to stop using facial  15 recognition altogether?  16 A. As long as they give the user the choice.  17 Q. Do you have an understanding of what  18 damages you're seeking under BIPA?  19 A. I do not.  20 Q. Do you know if they are statutory or  21 otherwise?  22 MR. RICHMAN: Objection.  23 A. I don't understand that.  24 Q. Okay. I'm sorry. Did you say you don't  25 understand that?</p>

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1 A. I do not understand what that means.  
 2 Q. Are you going to root for the Dodgers  
 3 tonight?  
 4 (Laughter.)  
 5 MR. NADOLENCO: Why don't we take a break?  
 6 VIDEOGRAPHER: The time is 2:27 P.M., and  
 7 we're going off the video record.  
 8 (Recess taken from 2:27 P.M. to  
 9 2:41 P.M.)  
 10 VIDEOGRAPHER: Okay. The time is  
 11 2:41 P.M., and we're back on the video record.  
 12 BY MR. NADOLENCO:  
 13 Q. Okay. We talked a little bit about this,  
 14 but I just want to go in a little bit more detail  
 15 about your search for documents that may or may not  
 16 be related to -- to this case.  
 17 A. Okay.  
 18 Q. Do you understand in general that Facebook  
 19 has asked you to produce any documents that relate  
 20 to the suit?  
 21 A. Yes, I am.  
 22 Q. And specifically we asked for documents or  
 23 communications that concern the lawsuit, Facebook's  
 24 use of facial recognition technology, or tag  
 25 suggestions. Is that generally your understanding

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1 of what we were looking for?  
 2 A. Yes, I am.  
 3 Q. What did you do to identify any documents  
 4 that might be responsive?  
 5 A. I went into my -- all my inbox folders --  
 6 or, excuse me -- all my e-mail folders and did  
 7 searches and archives and as much as I could to pull  
 8 up anything from Facebook.  
 9 Q. And what did you search? Did you use a  
 10 particular term?  
 11 A. We used several terms, one being Facebook,  
 12 a whole slew of tag words or identification words.  
 13 Q. So Facebook, tag suggestion, facial  
 14 recognition, stuff like that?  
 15 A. Exactly.  
 16 Q. And when you say e-mail accounts, that's  
 17 the Yahoo one and the Gmail one?  
 18 A. Yes.  
 19 Q. Inboxes and outboxes?  
 20 A. All.  
 21 Q. All folders?  
 22 A. All folders, subfolders.  
 23 Q. Did you find anything?  
 24 A. I did not.  
 25 Q. Did you search any other social media

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1 accounts, like your LinkedIn?  
 2 A. I have not.  
 3 Q. Did you include -- did you search any  
 4 direct messages to or from anyone?  
 5 MR. RICHMAN: Objection.  
 6 A. I did not.  
 7 Q. Did you search Facebook Messenger?  
 8 A. I did not.  
 9 Q. Did you search text messages?  
 10 A. I have not.  
 11 Q. And you understand that you're here as a  
 12 class representative?  
 13 A. I don't understand what you mean by "class  
 14 representative."  
 15 Q. Okay. Do you know one way or the other  
 16 whether you're bringing a putative class action,  
 17 possible class action?  
 18 A. Yes.  
 19 Q. Okay. So do you know one way or the other  
 20 whether you're a class representative or not?  
 21 MR. RICHMAN: Objection.  
 22 A. I do not.  
 23 Q. Do you know what the role of a class  
 24 representative is?  
 25 A. I do not.

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1 Q. Do you know how the class is defined in  
 2 this case?  
 3 A. No, I do not.  
 4 MR. RICHMAN: Objection.  
 5 Go ahead.  
 6 Q. Do you know if it's limited to Illinois  
 7 residents or not?  
 8 MR. RICHMAN: Objection.  
 9 He said he doesn't know how it's defined,  
 10 but go ahead.  
 11 A. I do not know.  
 12 Q. Does it include nonusers of Facebook?  
 13 MR. RICHMAN: Objection. Same objection.  
 14 But go ahead.  
 15 A. I do not know.  
 16 Q. Does it include -- hold on. Never mind. I  
 17 already asked you that.  
 18 Do you know if your -- the class would  
 19 apply to pictures taken outside of the State of  
 20 Illinois?  
 21 A. I would not know.  
 22 Q. Other than the Edelson firm, is any other  
 23 law firm representing you in this case?  
 24 A. No, it is not.  
 25 Q. Do you know whether you have a written

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<p>1 retention agreement with the Edelson firm?</p> <p>2 A. I believe I do, yes.</p> <p>3 Q. Do you have a copy?</p> <p>4 A. Not present, but I do.</p> <p>5 Q. Do you know why that wasn't produced in</p> <p>6 this litigation?</p> <p>7 MR. RICHMAN: Objection.</p> <p>8 A. I do not.</p> <p>9 MR. RICHMAN: We can produce it. We'll</p> <p>10 produce it to you.</p> <p>11 MR. NADOLENCO: Okay.</p> <p>12 Will you guys also produce your retention</p> <p>13 agreements, David?</p> <p>14 MR. HALL: I'm happy to talk to you about</p> <p>15 it.</p> <p>16 MR. NADOLENCO: It's a yes-or-no question</p> <p>17 just on the record.</p> <p>18 MR. HALL: Yeah. I can't give you yes or</p> <p>19 no --</p> <p>20 MR. NADOLENCO: Okay.</p> <p>21 MR. HALL: -- right now, but I'm happy to</p> <p>22 go talk to my team and we can talk about it.</p> <p>23 MR. NADOLENCO: Okay.</p> <p>24 BY MR. NADOLENCO:</p> <p>25 Q. Do you know whether that retention</p>	<p>1 agreement -- the questions are back to you, not</p> <p>2 Mr. Hall.</p> <p>3 A. Oh, okay.</p> <p>4 Q. I probably shouldn't have asked him a</p> <p>5 question anyway.</p> <p>6 Do you know whether the retention agreement</p> <p>7 states who is obligated to pay the costs or expenses</p> <p>8 associated with this litigation?</p> <p>9 A. I do not.</p> <p>10 Q. Do you know one way or the other who pays</p> <p>11 those?</p> <p>12 A. No, I do not.</p> <p>13 Q. Do you know who's obligated to repay the</p> <p>14 costs of the case if Facebook prevails?</p> <p>15 A. I do not.</p> <p>16 Q. Aside from preparing from [sic] your</p> <p>17 depositions, how many times have you met in person</p> <p>18 with your lawyers in this case?</p> <p>19 A. Um, a handful of times.</p> <p>20 Q. Roughly how many?</p> <p>21 A. Less than five.</p> <p>22 Q. Collectively how long have those meetings</p> <p>23 lasted?</p> <p>24 A. Probably under three hours.</p> <p>25 Q. Do you communicate with your lawyers</p>
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<p>1 otherwise, other than those in-person meetings?</p> <p>2 A. On the phone.</p> <p>3 Q. How often have you talked to your lawyers</p> <p>4 on the phone?</p> <p>5 A. Um, sporadically. There is also e-mails</p> <p>6 too.</p> <p>7 Q. Okay. So how many e-mails and phone</p> <p>8 conversations in total would you estimate?</p> <p>9 A. Probably 50 in total, maybe going back and</p> <p>10 forth.</p> <p>11 Q. Other than what your lawyers are doing,</p> <p>12 have you done anything just personally to advance</p> <p>13 the case on your own?</p> <p>14 A. I have not.</p> <p>15 Q. How much time did you spend reviewing your</p> <p>16 prior depo transcript?</p> <p>17 A. Just about a half hour this morning.</p> <p>18 Q. And other than that, have you reviewed any</p> <p>19 documents related to this case?</p> <p>20 A. I have not.</p> <p>21 Q. Like, did you -- have you read any court</p> <p>22 opinions?</p> <p>23 A. I have not.</p> <p>24 Q. Have you read any documents Facebook</p> <p>25 produced?</p>	<p>1 A. I have not.</p> <p>2 Q. Have you read any filings the parties have</p> <p>3 made in court?</p> <p>4 A. No, I have not.</p> <p>5 Q. Have you talked to any proposed class</p> <p>6 members about the case?</p> <p>7 A. I have not.</p> <p>8 Q. Are you aware whether your lawyers attended</p> <p>9 a mediation in this case?</p> <p>10 A. I am not.</p> <p>11 Q. Do you know when trial is scheduled for?</p> <p>12 A. No, I do not.</p> <p>13 Q. Do you believe that you've been harmed at</p> <p>14 all by tag suggestions?</p> <p>15 A. I'm unaware if I ever have or not.</p> <p>16 Q. Okay. So that means -- are you aware of</p> <p>17 losing any money because of facial recognition or</p> <p>18 tag suggestions on Facebook?</p> <p>19 A. No, I'm not.</p> <p>20 Q. Losing any property?</p> <p>21 A. No.</p> <p>22 Q. Are you aware of any other harm because of</p> <p>23 facial recognition or tag suggestions on Facebook?</p> <p>24 A. Not to my knowledge.</p> <p>25 MR. NADOLENCO: Can I have got two minutes?</p>

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<p style="text-align: right;">Page 147</p> <p>1 I may be done.</p> <p>2 MR. RICHMAN: That's amazing.</p> <p>3 MR. NADOLENCO: Is this a world record for</p> <p>4 you?</p> <p>5 VIDEOGRAPHER: Oh, shall I go off the</p> <p>6 record?</p> <p>7 MR. NADOLENCO: Oh, I'm sorry. Yes.</p> <p>8 VIDEOGRAPHER: Okay. The time is</p> <p>9 2:49 P.M., and we're going off the video</p> <p>10 record.</p> <p>11 (Recess taken from 2:49 P.M. to</p> <p>12 2:54 P.M.)</p> <p>13 VIDEOGRAPHER: The time is 2:54 P.M., and</p> <p>14 we're back on the video record.</p> <p>15 MR. NADOLENCO: I -- I don't have any more</p> <p>16 questions, Mr. Licata. Thank you.</p> <p>17 MR. RICHMAN: I've got just a couple</p> <p>18 things, if you don't mind.</p> <p>19 First, can I just ask that you guys</p> <p>20 produce, what is it, Exhibit 33 and 34 and any</p> <p>21 past versions you have of this to us. I don't</p> <p>22 think we've gotten these in discovery.</p> <p>23 MR. HALL: Also 32.</p> <p>24 MR. NADOLENCO: You guys can make whatever</p> <p>25 request you want, but I think we've produced</p>	<p style="text-align: right;">Page 148</p> <p>1 whatever was required.</p> <p>2 (A comment was made that could not be</p> <p>3 heard.)</p> <p>4 MR. RICHMAN: Okay.</p> <p>5 MR. HALL: And an earlier ver- -- so you</p> <p>6 haven't produced these versions, though; right?</p> <p>7 Is that correct? Because they are not Bates</p> <p>8 labeled.</p> <p>9 MR. PROVANCE: Um, those are -- well, we'll</p> <p>10 meet and confer about this afterwards.</p> <p>11 MR. HALL: Okay.</p> <p>12 MR. RICHMAN: Sure. We can figure it out.</p> <p>13 Yeah, if you produced the content, you can just</p> <p>14 point us to it, and hopefully -- and we'll be</p> <p>15 there.</p> <p>16 A couple of quick questions for Mr. Licata.</p> <p>17 EXAMINATION</p> <p>18 BY MR. RICHMAN:</p> <p>19 Q. First, Mr. Licata, are you aware of the</p> <p>20 parties in this case having any discussions about a</p> <p>21 potential resolution of the case?</p> <p>22 A. I had a conversation with David --</p> <p>23 Q. Well, hold. Let me just stop you there.</p> <p>24 A. Okay.</p> <p>25 Q. Let's -- I don't want you to reveal any</p>
<p style="text-align: right;">Page 149</p> <p>1 conversations with your attorneys, the content of</p> <p>2 it.</p> <p>3 A. Okay.</p> <p>4 Q. I'm just simply asking whether you're aware</p> <p>5 that those conversations regarding potential</p> <p>6 resolution have -- have taken place?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And what's your understanding of the</p> <p>9 status of those discussions?</p> <p>10 A. That it didn't go anywhere.</p> <p>11 Q. Okay. There was a question that</p> <p>12 Mr. Nadolenco asked you earlier about your</p> <p>13 understanding of what a class representative was.</p> <p>14 Do you remember those questions?</p> <p>15 A. Yes, I do.</p> <p>16 Q. Okay. Do you know -- can you tell me</p> <p>17 who -- who are you representing in your class, and</p> <p>18 when I -- or in this case, and when I ask that, do I</p> <p>19 mean -- I mean are you representing only yourself?</p> <p>20 A. No.</p> <p>21 Q. Okay. Who else are you representing?</p> <p>22 A. Anybody that could be affected by this</p> <p>23 whole privacy issue.</p> <p>24 Q. And when you say "affected by this privacy</p> <p>25 issue," what do you mean?</p>	<p style="text-align: right;">Page 150</p> <p>1 A. Um, I guess anybody who could be in a</p> <p>2 very -- like the same situation, not being made</p> <p>3 aware that these disclosures were out there and that</p> <p>4 they have been storing their data without their</p> <p>5 consent.</p> <p>6 Q. So does that mean to you that you have to</p> <p>7 represent their interests in the case as well?</p> <p>8 A. Yes. Yes.</p> <p>9 MR. RICHMAN: That's all I had.</p> <p>10 VIDEOGRAPHER: Okay. The time is 2:57 P.M.</p> <p>11 This is the end of tape one. It's also the end</p> <p>12 of the deposition of Mr. Carlo Licata, Volume</p> <p>13 II, and we're going off the video record.</p> <p>14 Thank you, Mr. Licata.</p> <p>15 THE WITNESS: Thank you.</p> <p>16 (Time noted: 2:57 P.M.)</p> <p>17</p> <p>18</p> <p>19 _____</p> <p>20 CARLO LICATA</p> <p>21</p> <p>22 SUBSCRIBED TO AND SWORN BEFORE ME</p> <p>23 THIS ____ DAY OF _____, 20__.</p> <p>24</p> <p>25 _____</p> <p>(Notary Public) MY COMMISSION EXPIRES: _____</p>

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## C E R T I F I C A T E

I, Paula Campbell, CSR, RDR, CRR, CRC, do hereby certify that on Tuesday, October 24, 2017 appeared before me, CARLO LICATA.

I further certify that the said witness was first duly sworn to testify to the truth in the cause aforesaid.

I further certify that the signature of the witness to the foregoing deposition was not specified by counsel.

I further certify that I am not counsel for nor in any way related to any of the parties to this suit, nor financially interested in the action.

IN TESTIMONY WHEREOF, I have hereunto set my hand on this 26th day of October, 2017.

\_\_\_\_\_  
Paula Campbell, CSR, RDR, CRR, CRC  
Certified Shorthand Reporter  
Registered Diplomat Reporter  
Certified Realtime Reporter  
Certified Realtime Captioner  
Illinois C.S.R. No. 084-003481

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	MR. RICHMAN	148

-----EXHIBITS PREVIOUSLY MARKED-----  
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Exhibit 31 FBBIPA_00001123 through	117	9
1125		
Exhibit 33 one-page document,	120	13
Timeline and Tagging		
Settings		
Exhibit 34 eight-page document, Data	122	20
Policy		

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## ERRATA SHEET FOR THE TRANSCRIPT OF:

CASE NAME: In Re Facebook Biometric Information  
Privacy Litigation

DEPOSITION DATE: February 17, 2016

WITNESS NAME: Carlo Licata

Reason codes:

1. To clarify the record.
2. To conform to the facts.
3. To correct transcription errors.

Page \_\_\_\_ Line \_\_\_\_ Reason \_\_\_\_  
From \_\_\_\_ to \_\_\_\_

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\_\_\_\_\_  
CARLO LICATA  
SUBSCRIBED TO AND SWORN BEFORE ME  
THIS \_\_\_\_ DAY OF \_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Notary Public) MY COMMISSION EXPIRES: \_\_\_\_\_

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